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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

In re DERRICK M., a Person Coming  
Under the Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

DERRICK M.,

Defendant and Appellant.

A142286

(Contra Costa County  
Super. Ct. No. J1400532)

Minor Derrick M. appeals from a juvenile court dispositional order imposing sex offender counseling as one of the conditions of his probation. He contends the imposition of the condition constituted an abuse of the court's discretion. We conclude there was no abuse of discretion, and we affirm.

**FACTUAL BACKGROUND**

By amended Welfare and Institutions Code section 602 juvenile wardship petition filed on May 27, 2014, the Contra Costa County District Attorney charged then 14-year-old Derrick with seven counts relating to two separate crimes. Two felony charges (first degree residential burglary and vandalism) and two misdemeanor charges (resisting a peace officer and giving false information to a peace officer) stemmed from Derrick's admitted participation in a home burglary. Three additional misdemeanors (second

degree commercial burglary, petty theft, and resisting a peace officer) stemmed from Derrick's theft of a videogame controller from a Target store.

At a May 28, 2014 pre-trial conference, Derrick pleaded no contest to the misdemeanor petty theft charge and an added charge of felony second degree burglary, and the remaining charges were dismissed with a *Harvey*<sup>1</sup> waiver.

In its report and recommendation, the probation department detailed Derrick's history, including, among other things, the circumstances of the current petition. As particularly relevant here, with regards to Derrick's school history, the department stated: "The minor is in the ninth grade. Prior to his arrest, he was attending Bridges Community Day School. Since enrolling in Bridges in February 20, 2014, the minor has incurred eighteen absences and was suspended two times. According to his student discipline summary, the minor was suspended on February 25, 2104 for swearing at the school principal and on March 26, 2014 for sexual harassment towards a classmate. [¶] Prior to enrolling in Bridges, the minor attended Deer Valley High School where he earned an 'F' in each of his classes. During the 2013/2014 school year, the minor incurred 66 unexcused tardies and was suspended 6 times. According to his student discipline summary, the minor was suspended for the following: August 19, 2013 and September 27, 2013 for fighting; October 25, 2013 for using profanity towards school staff; November 19, 2013 for requesting sexual favors from another student; December 13, 2013 for driving a school security cart and crashing it into another vehicle; and February 6, 2014 for exhibiting unwanted sexual advances." The November 19, 2013, incident resulted in a referral to probation for annoying or molesting a child under 18 years of age (Pen. Code, § 647.6, subd. (a)(1)), although the matter was closed at intake.

At a June 11, 2014 dispositional hearing, the court declared Derrick a ward of the juvenile court and imposed a six-month commitment to Orin Allen Youth Rehabilitation Facility. In addition to the standard conditions of probation, the court also required Derrick to attend anger management, theft awareness, individual, family, and substance

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<sup>1</sup> *People v. Harvey* (1979) 25 Cal.3d 754.

abuse counseling. At the urging of the District Attorney, and over the objection of Derrick's counsel, the court additionally imposed sex offender counseling, which was, according to the court, "warranted by [Derrick's] conduct on at least three occasions at school."

Derrick filed a timely appeal.

## DISCUSSION

Derrick's sole argument on appeal challenges the court's imposition of sex offender counseling. He contends it bore no relationship to his criminal conduct and was not needed to forestall future criminality. He submits that his "sexual attitudes and behavior might well have been appropriate subjects to discuss in the context of the individual counseling in which [he] was ordered to participate, a separate set of counseling sessions designed for sex offenders was not warranted." Derrick's arguments lack merit.<sup>2</sup>

In *In re Victor L.* (2010) 182 Cal.App.4th 902, 909-910, we summarized the general legal principles governing the imposition of probation conditions in matters involving minors, beginning with these observations: " 'The state, when it asserts jurisdiction over a minor, stands in the shoes of the parents' [citation], thereby occupying a 'unique role . . . in caring for the minor's well-being.' [Citation.] In keeping with this role, [Welfare and Institutions Code] section 730, subdivision (b), provides that the court may impose 'any and all reasonable [probation] conditions that it may determine fitting and proper to the end that justice may be done and the reformation and rehabilitation of the ward enhanced.' [¶] The permissible scope of discretion in formulating terms of juvenile probation is even greater than that allowed for adults. '[E]ven where there is an invasion of protected freedoms "the power of the state to control the conduct of children

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<sup>2</sup> The People contend that Derrick has forfeited his claim by not "avail[ing] himself of the court's offer to conduct a contested dispositional hearing" after objecting to the juvenile court's imposition of the sex offender counseling condition. Derrick vigorously disagrees. Because we conclude Derrick's argument fails on the merits, we need not reach this issue.

reaches beyond the scope of its authority over adults. . . .” ’ [Citation.] This is because juveniles are deemed to be ‘more in need of guidance and supervision than adults, and because a minor’s constitutional rights are more circumscribed.’ [Citation.] Thus, ‘ “a condition of probation that would be unconstitutional or otherwise improper for an adult probationer may be permissible for a minor under the supervision of the juvenile court.” ’ [Citations.]”

The juvenile court’s discretion, while broad, is not unlimited, however: “A condition of probation is invalid if ‘ “it ‘(1) has no relationship to the crime of which the offender was convicted, (2) relates to conduct which is not in itself criminal, and (3) requires or forbids conduct which is not reasonably related to future criminality . . . .’ [Citation.] Conversely, a condition of probation which requires or forbids conduct which is not itself criminal is valid if that conduct is reasonably related to the crime of which the defendant was convicted or to future criminality.” [Citations.]’ [Citations.]” (*In re P.A.* (2012) 211 Cal.App.4th 23, 33-34, fn. 7.)

We review the juvenile court’s order imposing probation conditions for abuse of discretion, and we will not disturb the juvenile court’s order absent manifest abuse of that discretion. (*In re P.A.*, *supra*, 211 Cal.App.4th at p. 33; *In re Walter P.* (2009) 170 Cal.App.4th 95, 100.) We conclude there was no abuse of discretion here.

The probation report described three incidences of inappropriate sexual conduct by Derrick in a four-month period that resulted in school suspensions. Following the first incident, in which Derrick “request[ed] sexual favors from another student,” he was also referred to the probation department for annoying or molesting a child under 18 years of age. Despite this suspension and referral, Derrick went on to incur two more school suspensions in the following four months for exhibiting unwanted sexual advances and sexual harassment towards a classmate. Given this history, as well as impulse control issues suggested by Derrick’s overall record, the juvenile court was well within its broad discretion in imposing sex-offender counseling as a condition of his probation. (*In re Walter P.*, *supra*, 170 Cal.App.4th at p. 100 [“In fashioning the conditions of probation,

the juvenile court should consider the minor’s entire social history in addition to the circumstances of the crime.”].)

As the court aptly observed at the disposition hearing: “The disposition and probation conditions are supposed to be fitting and proper to the end that justice may be done, . . . and the reformation and rehabilitation of the ward enhanced. [¶] . . . [¶] So when we bring to the table a young man that has been found to have committed some crimes, we’re going to address everything we can to assist him in reshaping his thinking, conduct and activities to conform with what the world expects of him, what the benefit is to him, in terms of others and everything in his life. He is a young man, and now is the time to do it. It definitely is the time to do it.” In furtherance of the juvenile court’s rehabilitative function (*In re Walter P.*, *supra*, 170 Cal.App.4th at p. 100), the court was within its discretion in imposing sex offender counseling.

#### **DISPOSITION**

The judgment is affirmed.

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Richman, J.

We concur:

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Kline, P.J.

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Stewart, J.